

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON AGRICULTURE**

**Call to Order:** By **CHAIRMAN DIANE RICE**, on February 13, 2003 at 3:00 P.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Diane Rice, Chairman (R)  
Rep. Ralph Lenhart, Vice Chairman (D)  
Rep. Joan Andersen (R)  
Rep. Norman Ballantyne (D)  
Rep. Bob Bergren (D)  
Rep. Norma Bixby (D)  
Rep. Carol Lambert (R)  
Rep. Bruce Malcolm (R)  
Rep. Jim Peterson (R)  
Rep. Veronica Small-Eastman (D)  
Rep. Frank Smith (D)  
Rep. Donald Steinbeisser (R)  
Rep. Bill Thomas (R)  
Rep. Karl Waitschies (R)

**Members Excused:** Rep. Verdell Jackson, Vice Chairman (R)  
Rep. Brennan Ryan (D)

**Members Absent:** None.

**Staff Present:** Lisa Gallagher, Committee Secretary  
Krista Lee Evans, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamp refers to material immediately following.

**Committee Business Summary:**

Hearing & Date Posted: HB 531, 2/6/2003  
Executive Action: HB 455

**HEARING ON HB 531**

**Sponsor:** REPRESENTATIVE DANIEL HURWITZ, HD 40, White Sulphur Springs

**Opening Statement by Sponsor:**

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 4.1}*

REP. HURWITZ handed out to the Committee a history of wildlife damage to property legislation from 1933 to 2001.

**EXHIBIT** (agh32a01)

REP. HURWITZ went through the bill section by section for the Committee.

**Proponents' Testimony:**

**Bill Galt, Rancher,** said that the elk in his area (White Sulphur Springs) have tripled in the last five years. Currently one third of his grass goes to elk. The elk are damaging his property and the fences that he has put up don't do anything. An elk will walk right through them. He said that the important part of this bill is the right to haze or herd the elk off your land. For six months of the year hunting is not permitted and the elk ruin irrigation and eat all the grass for the spring.

**Tom Lane, Rancher,** said that there is a large amount of property that is being sold to out-of-staters who don't let people hunt on their land and this is only making the elk problem worse. Private property owners need protection against the elk that are destroying their property.

**Wally Bailey, Rancher,** said that he is experiencing the same as the rest of the ranchers, a large increase in the number of elk coming on his ranch. He said that he has tried many different tactics, but they have not worked. This bill will allow the rancher the tools to deal with the problem.

**Elaine Mann, Montana Association of Counties (MACO),** said that this is a problem that is widespread and all over this state. All 56 counties have said that they are having problems with wild animals. She told the Committee about many different stories in regards to the over population of wild animals in this state.

**Nancy Schlepp, Montana Farm Bureau,** said that these concerns that the ranchers have brought forward are valid concerns. This is a frustration bill, and these people need protection from wild animals.

**{Tape: 1; Side: A; Approx. Time Counter: 14.6 - 16.4}**

**Steve Pilcher, Montana Stock Growers Association**, said that they support this bill. There are problems with the current wildlife management program, and these problems need to be addressed. Private property owners need the tools to protect their land.

**Opponents' Testimony:**

**{Tape: 1; Side: A; Approx. Time Counter: 16.7 - 22.4}**

**Jeff Hagener, Director of Montana Fish Wildlife and Parks**, submitted his written testimony.

**EXHIBIT (agh32a02)**

**Bill Orsello**, said that he is sympathetic to the problem of game damage, however it needs to be dealt with in another manner. He handed out to the Committee a statute of Alberta, Canada.

**EXHIBIT (agh32a03)**

**Bill Orsello** said that this would be a simple procedure to solve this problem, and that they need to look at other solutions.

**Janet Ellis, Montana Audubon Society**, said that they need to look to distribution to solve this problem, and that they oppose this bill.

**Informational Testimony:**

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 3.4}**

**Ben Hurwitz** submitted his written testimony.

**EXHIBIT (agh32a04)**

**{Tape: 1; Side: B; Approx. Time Counter: 3.6 - 10.4}**

**Lance Lovell, Attorney**, submitted his written testimony.

**EXHIBIT (agh32a05)**

**Questions from Committee Members and Responses:**

**REP. PETERSON** asked Bill Galt, "Say you have the scenario that you have your pasture for the spring and 400 elk move in, have you called Fish Wildlife and Parks for help?" **Bill Galt** said that because he is an outfitter he does not qualify for game damage assistance. He also said that if you have 200 to 300 stacks of hay and the elk move in, in one night it will be all gone. The elk knock down the fences and in one case knocked over

his stacks and killed sixteen of his cows. Fish Wildlife and Parks (FWP) does not see eating grass as damage, and it is hard to get results from them.

**REP. PETERSON** asked Bill Galt how he felt about the fact that the sponsor was willing to remove the "lethal" part in the bill.

**Bill Galt** said that he is okay with that, plus there are too many elk to kill to make a difference. He also said that the current tools do not address this issue.

**REP. BALLANTYNE** asked Bill Galt if FWP provides the fencing to put around stacks of hay. **Bill Galt** said that if you qualify, they provide it, but the damage to the stacks is minimal, compared to the damage to the grass.

**REP. BALLANTYNE** asked Bill Galt if you have the animals won't they be back the next morning. **Bill Galt** said they will and that is why there is a need for this bill. A long term solution is needed for this problem. The elk need to be moved to other places and there needs to be a plan to disperse elk.

*{Tape: 1; Side: B; Approx. Time Counter: 18.2 - 20.3}*

**REP. LENHART** asked Ben Hurwitz if the money that he spent on his fence (\$200,000) was out of his pocket. **Ben Hurwitz** said, "Yes."

**REP. LENHART** asked Ben Hurwitz if he requested any financial help from FWP. **Ben Hurwitz** said, "No."

**REP. LAMBERT** asked REP. HURWITZ if the term "lethal" is amended out, what difference will it make to kill permits. **REP. HURWITZ** said that ranchers cannot set the number of elk that need to be killed realistically. The hunt has to be organized through FWP.

**REP. LAMBERT** asked REP. HURWITZ if the elk get used to different scare tactics and ignore them like the deer do. **REP. HURWITZ** said that before his brother built his fence, nothing that they had tried worked.

**REP. SMITH** asked Jeff Hagener how long it takes to do a special hunt. **Jeff Hagener** said that it depends, some take longer than others. It can take anywhere from one week to ten days.

**REP. SMITH** asked Jeff Hagener how the Department decides on the number of elk to be killed in a special hunt. **Jeff Hagener** said that it depends, and each season is different depending on the weather conditions.

**REP. SMITH** asked Jeff Hagener if there were any other requirements for a special hunt. **Jeff Hagener** deferred to **Alan Charles, FWP**, who said that for damaged property hunts they range from a one day waiting period to a 10 day waiting period, and it all depends on the hunt. One requirement is if the rancher wants to qualify for game damage assistance he must allow a public hunt on his land.

**REP. SMITH** asked Alan Charles to define hunting. **Alan Charles** said that it is allowing the public to hunt without charge and without restrictions in a certain time period. There is a need to allow adequate harvest with reasonable numbers.

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 3.6}*

**REP. LENHART** asked Jeff Hagener if the Department has money set aside for fencing. **Jeff Hagener** said that they have money for enclosing stacks, but they don't have money for the fencing of the rancher's property.

**REP. LENHART** asked Jeff Hagener if that is an option that they would consider. **Jeff Hagener** said that they do not have enough money to fence everyone's property.

**REP. PETERSON** asked Jeff Hagener what the history was behind why elk eating the ranchers grass is not considered property damage, and what other solutions could be used to solve this problem. **Jeff Hagener** said that he would like to defer the history part of the question to Alan Charles, but would like to answer the second part of the question. **Jeff Hagener** said that the length of the season can be extended and currently Montana has one of the longest hunting seasons.

**REP. PETERSON** asked Jeff Hagener if the word "lethal" is removed from the bill if his position on the bill would change. **Jeff Hagener** said that the word "lethal" is of concern to the Department as well as the word "hazing."

**REP. PETERSON** deferred his question about the history to **Alan Charles**, who said that these are standing crops and are not considered damaged property. He also said that the Department provides noise devices and repellants to keep the animals off rancher's property, as well as assistance with hazing without the use of a boat or plane.

**REP. LENHART** asked Alan Charles to define the word "hazing" and how it is different from "driving" or "herding." **Alan Charles**

said that the word "herding" is used in code and not "hazing," however herding is defined as "a tactic used to disperse."

**REP. LENHART** asked **REP. HURWITZ** if the word "hazing" in the title of the bill was causing a problem. **REP. HURWITZ** said that it might be, but deferred to Lance Lovell, who said that the word "hazing" means a "scare tactic," like a firecracker, nonpersonal.

**REP. ANDERSON** stated that where she is from there are many irrigated farms that have buildings on them and would not be appropriate for hunting. However, the elk come down at night and eat the corn. **REP. ANDERSON** asked Alan Charles if FWP allows for a variance for hunting because the circumstances were inappropriate. **Alan Charles** said, "Yes."

**REP. ANDERSON** asked Alan Charles what other assistance FWP offers. **Alan Charles** said that they offer repellent and kill tags.

**REP. LAMBERT** asked Lance Lovell if the term "lethal" was amended out of the bill how would it affect kill permits. **Lance Lovell** said that this bill could be amended where Sections D and E were dropped. The message that needs to be sent to FWP is that landowners are having their land damaged and it needs to be stopped. The State of Montana has no right to house elk on private property.

**REP. LAMBERT** asked Lance Lovell, "Who makes the decision about what is special and unique." **Lance Lovell** said that a game warden is first sent out and then he reports to the Helena office, and a decision is then made.

**REP. LAMBERT** asked Alan Charles the same question. **Alan Charles** said that a game warden or a biologist is sent out and within 48 hours a decision is made and then reported to the regional office, not the Helena office, and from there a decision is made.

*{Tape: 2; Side: A; Approx. Time Counter: 17.3 - 21.4}*

**REP. MALCOLM** asked Alan Charles if the concept of allowing public hunting to take place to qualify for damaged property assistance came from a policy or if it is state law. **Alan Charles** said that an interim committee studied this in 1985, and the law was charged.

**REP. MALCOLM** asked Alan Charles if it is in code. **Alan Charles** said, "Yes, it is."

**REP. MALCOLM** asked Jeff Hagener if he would comment on the fact that there is hang up for the landowners having to have a public hunt to qualify for damage assistance. **Jeff Hagener** said that if the rancher is outfitting then they are not harvesting, and controlling the number of animals.

**REP. SMALL-EASTMAN** asked Jeff Hagener since FWP brought the elk into the area, how are they trying to take care of the problem of overpopulation. **Jeff Hagener** said that the reference of the FWP bringing the elk into the area was back at the turn of the century when the moving of elk was historically done. Today elk are not transported to different areas, because there is nowhere to put them.

**REP. SMALL-EASTMAN** asked Jeff Hagener if he agreed with the concept of using animal unit month (AUM's) to control the elk population. **Jeff Hagener** said they have used AUM's in some areas. The last three years they have had low harvests, and more and more the typical situation is that new landowners are closing off their land to hunting.

**REP. SMALL-EASTMAN** asked Jeff Hagener, "Why does the FWP herd the elk and put them somewhere else, and also if FWP has contacted the tribes about taking the elk?" **Jeff Hagener** said that contacting the tribes is an option. However, there are disease issues. This would be an option if all of the criteria are meet. Fish Wildlife and Parks will not herd elk and put them somewhere else because there is nowhere to put them, if they herd the elk it will be lethal.

**REP SMALL-EASTMAN** asked Jeff Hagener why FWP is asking the landowner to fence out the elk, but the same expectation is not being expected by FWP. **Jeff Hagener** said that they are not telling the landowner to fence their property.

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 3.3}*

**REP. LENHART** asked Bill Galt if fee hunters what to shoot bulls. **Bill Galt** said, "Yes."

**REP. LENHART** asked Bill Galt if they pay a fee. **Bill Galt** said, "Yes."

**REP. LENHART** asked Bill Galt what if someone wants to shoot a cow (female elk) is there a fee. **Bill Galt** said, "No, they let the cow hunters kill for free, and help them out in anyway that they can."

**REP. LENHART** asked Bill Galt why the elk herds are growing so fast. **Bill Galt** said that it is because of many factors. However, the means to control the elk have been taken away.

**REP. SMITH** asked Alan Charles if the legislature is going to have to decide who is responsible for keeping the elk out. **Alan Charles** said that FWP does not own the elk. He also said that FWP is trying to manage them, and they are currently in the process of updating their management program. The State of Montana has very liberal hunting seasons, and the Department is exploring new strategies, and working with landowners.

**REP. SMITH** asked Alan Charles if FWP has asked the ranchers, that are here today, for their help in solving this problem. **Alan Charles** said that he has worked with Bill Galt for the last month.

**REP. WAITSCHIES** asked Alan Charles if the landowner is currently allowed to herd the elk. **Alan Charles** said that the Department uses the landowner to herd the elk.

**REP. WAITSCHIES** asked Alan Charles if a landowner needs FWP authorization to herd the elk. **Alan Charles** said landowners can herd the elk, they just can't use a boat or self-propelled vehicle. **Alan Charles** deferred to their legal counsel, **Bob Lange**, who said that there is nothing in statute that prevents the landowner from using nonlethal means to herd the elk. He also said that when the Department comes in to help with game damage assistance they try and have the landowner herd the elk, because they know their patterns.

**REP. WAITSCHIES** asked **REP. HURWITZ** if you can already herd elk, what will this bill do besides allow "lethal use." **REP. HURWITZ** said that it will change the double standard. He said that the only way that he knows to move the elk is by helicopter.

*{Tape: 2; Side: B; Approx. Time Counter: 12.2}*

**REP. JACKSON** came in.

**REP. WAITSCHIES** asked Jeff Hagener if the private property owner is allowed to use motor vehicles to move elk. **Jeff Hagener** said that they have the right to use motor vehicles, just not boat, or self-propelled aircraft.

**REP. WAITSCHIES** asked **REP. HURWITZ**, "Which is it, can or can't you use motor vehicles to move the elk?" **REP. HURWITZ** said that

you can use motor vehicles, but they want to be able to use a helicopter.

**REP. THOMAS** asked Jeff Hagener if a compromise could be reached where the elk could be hazed off the rancher's land with a helicopter if a FWP representative was in the helicopter with the landowner. **Jeff Hagener** said, "I do not see a problem with that."

**REP. THOMAS** asked the same question to **REP. HURWITZ**, who said, "That would be ok."

**REP. THOMAS** asked the same question again to **Bill Galt**, who said that this is a workable compromise. He also said that they have asked the FWP Department many times to be able to do this, and repeatable they have been denied.

**REP. THOMAS** asked **REP. HURWITZ** if he would consider this an friendly amendment to his bill. **REP. HURWITZ** said, "Yes, but it is already in the bill."

**REP. THOMAS** asked Bob Lange if there is an opportunity for agreement, would the Department agree to it. **Bob Lange** said that they would be pleased to work something out and would be more than willing.

**REP. SMITH** asked Bob Lange when the federal regulations against hazing with a helicopter passed. **Bob Lange** said that the federal legislation has some exceptions. The state can permit this type of hazing, and there are avenues that can be looked at, and this could be amended so it would be allowed.

**REP. SMITH** asked Bob Lange what the current requirements are that need to be met in order to haze elk with helicopters. **Bob Lange** said that right now it is not permitted by law, but there are some exceptions and that is what the Department will look at. They could get a permit and then it could happen.

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 4.3}*

**REP. MALCOLM** asked Bob Lange what special restrictions will be placed on these landowners in order for them to haze elk with helicopters, and will the public hunt restrictions apply. **Bob Lange** said that the game damage requirements will still apply.

**REP. MALCOLM** asked Bob Lange if the helicopter assistance would apply to the ranchers here today. **Bob Lange** said that if they want game damage assistance then they need to met the requirements.

**REP. RICE** stated that the obvious solution to this problem is to up the numbers of hunting permits. **REP. RICE** asked Jeff Hagener why have they not increased the number of permits. **Jeff Hagener** said that they have tried to expand, however they don't have control over the weather and the last couple years there has been very little snow. When there is no snow the animals stay up high, and the numbers of permits that are filled drop.

**REP. RICE** asked Jeff Hagener how much the quotas were increased. **Jeff Hagener** said that he did not know, because it was increased per area.

**REP. RICE** asked Alan Charles if he would describe the program in Wyoming in regard to elk and ranchers land. **Alan Charles** said that in Wyoming the FWP compensates the landowner for any damage that the elk have done to their property.

**REP. LAMBERT** asked Jeff Hagener if they have a lot of problems with people harassing wildlife with boats. **Jeff Hagener** said that they do not have a lot of it, but some people have chased waterfowl with their boats.

**Closing by Sponsor:**

**REP. HURWITZ** said that now everyone is beginning to understand the frustrations of these ranchers. He said that on two ranches in White Sulphur Springs there are 1,500 head of elk. If that is totaled up, it ends up to be \$700 per day that ranchers are losing, and that is a lot of money. All these ranchers have to sell is their grass and it is being eaten by the elk.

**EXECUTIVE ACTION ON HB 455**

**Motion:** **REP. JACKSON** moved that **HB 455 DO PASS.**

**Motion:** **REP. WAITSCHIES** moved that **HB 455 BE AMENDED.**

**Discussion:**

**Krista Lee Evans** explained the amendment.  
**EXHIBIT**(agh32a06)

**REP. PETERSON** said that he is in favor of this amendment, because it provides for a notice.

**REP. JACKSON** asked Krista Lee Evans if the notice could be a telephone call. **Krista Lee Evans** said that there is only a two hour notice period, and a phone call is probably the only way.

**REP. LAMBERT** asked Krista Lee Evans if they did not get a hold of the residence would they just not go that day. **Krista Lee Evans** said that they inspector has to be accompanied by the owner, and this is a protection thing.

**REP. RICE** said that she has a problem with the language that states "the Department may enter." She said that more power can not be given to the Department than to the police.

**REP. WAITSCHIES** said that he had some of the same concerns, but he is okay with this now, because the Department does need inspection rights.

**REP. PETERSON** said that the inspector must be accommodated by the owner and this provides protection to the owner.

**Vote:** Motion that HB 455 BE AMENDED carried 16-0, by voice vote.

**Motion/Vote:** **REP. JACKSON** moved that HB 455 DO PASS AS AMENDED. Motion carried 16-0, by voice vote.

**ADJOURNMENT**

Adjournment: 5:40 P.M.

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REP. DIANE RICE, Chairman

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LISA GALLAGHER, Secretary

DR/LG

**EXHIBIT** (agh32aad)